

IN THE UNITED STATES PATENT AND TRADEMAR.
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ATTORNEY DOCKET NO: T-92235

Applicant : Timezone Trademark Management Limited
Serial No. : 78/523,456
Filed : November 29, 2004
Mark : TIMEZONE & design

TO THE TRADEMARK TRIAL AND APPEAL BOARD

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT'S REPLY BRIEF

Applicant Timezone Trademark Management Limited submits this Reply Brief in response to the Examining Attorney's Appeal Brief dated July 26, 2007. Applicant's Appeal Brief sets forth Applicant's arguments in support of the registerability of its mark , **TimeZon** . Under the correct application of caselaw, the Applicant's mark TIMEZONE and design is entitled to registration.

I. Applicant's Unique Design Mark Makes Consumer Confusion Unlikely

Examiner's assertion that the word portion of the goods is more likely to be impressed upon a purchaser's memory is misguided. In evaluating the



08-20-2007

U.S. Patent & TM Office Mail Rept Dt. #30

similarities of the marks, a particular feature or portion of a mark can be accorded greater weight if it would make an impression upon purchasers that would be remembered and relied upon to identify the goods or services.

A. The Word Portion of the Mark Should Not Be Afforded Greater Weight

The cases cited by examiner standing for the proposition that, "the word portion of a mark is generally given greater weight," involve marks that incorporate arbitrary and fanciful terms, such as "DAKIN" for figurines and "APPETITO" for sausages. (See, *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999), and, *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987), *respectively*.) Such distinctive terms would obviously leave a greater impression upon a consumer.


Applicant's mark and the cited marks involve the term "time zone". Time zone is an ordinary term found in the dictionary having a readily apparent meaning, "a geographic region within which the same standard time is used." (Merriam-Webster's Online Dictionary, <http://www.m-w.com/dictionary/timezone>). Furthermore, in addition to the existence of the two cited registrations, there are several other registrations containing the term "TIME ZONE" alone or in association with other terms. *See copies of Registrations attached hereto as Exhibit 1.* The coexistence of several marks

containing the elements "TIME" and "ZONE" clearly demonstrates that the public readily distinguishes between these marks.

B. The Design Portion of the Mark Should Be Afforded Greater Weight

Applicant's design mark is highly distinctive and memorable. This unique design is alone enough to differentiate itself and clearly signify to consumers that Applicant's product emanates from a separate source unrelated to the marks cited by Examiner.

The Applicant's mark, **Time@Zone**, is readily distinguishable from

the cited mark, . Applicant's design incorporates the round image of the clock, which is repeated three times. This conjures up images of three separate time zones, while playing on the double entendre of a "zone" or a "place" in which timepieces are sold. On the other hand, the cited mark, as noted by the Examiner, appears as if to suggest a ringing or an alarm sounding. When viewed in connection with the goods, electronic watches and clocks, this mark leaves a separate and dissimilar impression. The logo designs themselves create a distinguishing overall impression and warrant against a finding of likelihood of confusion. (*Sunenblick v. Harrell*, 895 F. Supp. 616, 628 (S.D.N.Y. 1995) (concluding, despite the fact that the parties' marks were UPTOWN RECORDS and UPTOWN RECORDS for

similar goods and/or services, the marks were dissimilar because the logos were "easy to distinguish" and the marks created different "overall impression[s]"), *aff'd*, 101 F.3d 684 (2d Cir. 1996), *cert. denied*, 519 U.S. 964, 117 S. Ct. 386, 136 L. Ed. 2d 303 (1996), see also *Western Publishing Co., Inc. v. Rose Art Industries, Inc.*, 910 F.2d 57, 61 (2d Cir. 1990).

The logos in this instance are easy to distinguish, and the marks create wholly divergent commercial impressions. They are therefore not likely to cause confusion.

II. The Goods/Services are Not Likely to be Encountered by the Same Customers

Examiner's contention that consumers are likely to be confused by use of the marks in connection with "related" goods and services is misguided. Similar or even identical marks in the same or closely related fields can co-exist without confusion, particularly when the consumers are sophisticated purchasers. Furthermore, Applicant's identification of goods and services lists numerous "business services." These services are clearly directed at businesses. See *In re Intelistaf Healthcare Management, L.P.*, Serial No. 78387294, March 29, 2006 (Identification of services as "business services" did not overlap with Applicant's limitation of highly related debit card services to "consumers"). The *goods* offered by Registration No. 1227379 are not for the *services* under the Applicant's identification of goods.

(Emphasis added.) Further, the *services* offered by Registration No. 2892691 are for general business services and commercial art design and computer programming not the retail, importation, demonstration, consultation and exhibit services for timing devices.

Sophistication of the purchasers diminishes the possibility of consumer confusion. Furthermore, virtually identical marks which offer related goods or services can coexist in the marketplace without consumer confusion when the end consumers are separate and distinct. *Checkpoint Systems, Inc. v. Check Point Software Technologies Inc.*, 269 F.2d 270, 60 USPQ2d 1609, 1620 (3rd Cir. 2001)(No confusion likely when the marks CHECKPOINT and CHECK POINT were both used in the security industry, but marketed to different consumers), *See also, In re Alarmex Distributors, Inc., Serial No.78479366, March 20, 2007.* (No overlap between channels of trade where the marks ALARMAX and ALARMEX were both sold to different end consumers: retail and wholesale).

Applicant specifically identifies in its Application that it intends to offer "retail services" are specialized for the field of watches, clocks, horological and chronometric instruments. Purchasers of professional services are sophisticated consumers. Applicant's services are not meant for end use purchasers, they are geared toward retailers and wholesalers in a

specialized industry. The services offered by Applicant are customized and highly specific to its clientele. It is unlikely that any consumer would encounter any of the cited marks and find that they would emanate from the same source.

CONCLUSION

For the reasons discussed herein and in Applicant's Appeal Brief, it is clear there is no likelihood of confusion between the marks and therefore the refusals under 2(d) should be reversed.

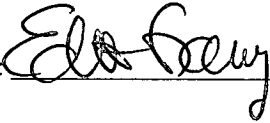
Respectfully submitted,
COLLEN *IP*

By: Michelle C. Morris
Jane F. Collen
Michelle C. Morris
Telephone: (914) 941 5668
The Applicant's attorney

JFC/MCM
Dated: August 16, 2007
COLLEN *IP*
Intellectual Property Law, P.C.
The Holyoke-Manhattan Building
80 South Highland Avenue
Town of Ossining
Westchester County, New York 10562

SHOULD ANY OTHER FEE BE REQUIRED, THE PATENT AND TRADEMARK OFFICE IS
HEREBY REQUESTED TO CHARGE SUCH FEE TO OUR DEPOSIT ACCOUNT 03-2465.

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED
STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO:
UNITED STATES PATENT AND TRADEMARK OFFICE, TRADEMARK TRIAL AND APPEAL
BOARD, P.O. BOX 1451, ALEXANDRIA, VA 22313-1451.

By: 

Date: August 16, 2007

EXHIBIT 1

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

United States Patent and Trademark Office

Reg. No. 2,545,894

Registered Mar. 12, 2002

**SERVICE MARK
PRINCIPAL REGISTER**

TIMEZONE

**AVEL PTY LTD (AUSTRALIA COMPANY)
49 KEW STREET
WELSHPOOL, WESTERN AUSTRALIA, AUSTRALIA 6106**

**FOR: ENTERTAINMENT SERVICES, NAMELY,
PROVIDING LEISURE CENTRES AND ARCADE
FACILITIES FOR AMUSEMENT AND RECREATION
OF PEOPLE, EXCLUDING THE PRODUCING,**

**ORGANIZING AND PRESENTING OF FASHION
SHOWS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).**

**OWNER OF AUSTRALIA REG. NO. 530563, DATED
3-13-1997, EXPIRES 3-13-2007.**

SER. NO. 75-881,222, FILED 12-27-1999.

LAVERNE THOMPSON, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

Reg. No. 2,243,044

United States Patent and Trademark Office

Registered May 4, 1999

**TRADEMARK
PRINCIPAL REGISTER**

Tymezone

**DOBBS-STANFORD CORPORATION (TEXAS
CORPORATION)
2715 ELECTRONIC LANE
DALLAS, TX 75220**

**FOR: ELECTRONIC CONTROLLER FOR
CONTROLLING VOLUME AND EQUALIZA-
TION OF AUDIO AND VIDEO SIGNALS FROM
TELEVISION, RADIO, SATELLITE, CABLE,
GLOBAL COMPUTER NETWORK AUDIO AND**

**PRERECORDED MEDIUMS SUCH AS CD AND
DVD, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND
38).**

**FIRST USE 11-25-1998; IN COMMERCE
11-25-1998.**

SN 75-096,540, FILED 4-30-1996.

CORA MOORHEAD, EXAMINING ATTORNEY

Int. Cls.: 9, 16, 18 and 25

Prior U.S. Cls.: 1, 2, 3, 5, 21, 22, 23, 26, 29, 36, 37, 38,
39, 41 and 50

United States Patent and Trademark Office

Reg. No. 3,145,669

Registered Sep. 19, 2006

**TRADEMARK
PRINCIPAL REGISTER**



WOLFGANG ENDLER (FED REP GERMANY
INDIVIDUAL)
HÖGERINGER STRASSE 27
83071 STEPHANSKIRCHEN
FED REP GERMANY

FOR: OPTICAL PRODUCTS, NAMELY EYE-GLASSES AND READING GLASSES, SPECTACLE CASES, SPECTACLE FRAMES, SUNGLASSES, SPORT GLASSES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FOR: BUSINESS ADVERTISING CARDS; PRINTED MATTER, NAMELY BROCHURES AND FLYERS IN THE FIELD OF ADVERTISING AND PRODUCT INFORMATION; CATALOGS IN THE FIELD OF FASHION; TRADING CARDS; PACKAGING MATERIALS MADE OF PAPER AND CARDBOARD; PAPER BAGS; POSTERS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FOR: WALLETS; BRIEFCASES; PURSES, NOT MADE OF PRECIOUS METAL; DOCUMENT BRIEFCASES; SUITCASES, TRAVELING BAGS; TOILETRY AND COSMETIC BAGS SOLD EMPTY; SPORTS BAGS; TRAVEL BAGS WITH WHEELS; BACKPACKS; SUITCASES FOR DOCUMENTS; GARMENT BAGS FOR TRAVELING; LEATHER AND TEXTILE SHOPPING BAGS; SMALL SUITCASES; HANDBAGS; HIP BAGS; BATHING, CAMPING AND MAP BAGS SOLD EMPTY; VANITY CASES SOLD EMPTY; UMBRELLAS; PARASOLS; SCHOOLBAGS, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

FOR: CLOTHING, NAMELY TROUSERS, SKIRTS, PULLOVERS, BODYSUITS, OVERALLS,

SHIRTS, SHIRT INSERTS, WOMEN'S DRESSES; SUITS; GABARDINE CLOTHING, NAMELY PAJAMAS; LEATHER BIKERS AND DRIVERS CLOTHES, NAMELY OVERALLS JACKETS, PARKAS, TROUSERS, GLOVES; JERSEY CLOTHING, NAMELY T-SHIRTS, SHORTS AND SKIRTS; CLOTHING MADE OF LEATHER IMITATIONS, NAMELY JACKETS, PARKAS, COATS, TROUSERS, SKIRTS, VESTS; OVERCOATS; JACKETS; PARKAS; COATS; FURLINED COATS; DRESSING GOWNS; FURS; BELTS; MONEY BELTS; HIP BELTS; GAITERS; BRACES; TIES; TIE KERCHIEFS; SCARVES; BREAST-POCKET HANDKERCHIEFS; SASHES; HEADGEAR, NAMELY HOODS, CAPS, MITRES, NAMELY, HEADBANDS, PEAK CAPS, EARMUFFS, HATS, TURBANS, BERETS; GLOVES, MITTENS; BATHROBES, BATH CAPS, BEACHWEAR, BATHING SUITS, TRUNKS, BANDANAS; BOOTS, LACE-UP BOOTS, ANKLE BOOTS, SANDALS, BEACH SHOES, SLIPPERS, FABRIC SHOES, SPORT SHOES; SOCKS, STOCKINGS; SWEATBANDS, STOLEES, SWEATERS, TRICOT CLOTHING, NAMELY PAJAMAS AND SHAWLS; SHIRTS; T-SHIRTS; WAISTCOATS; BABY CLOTHES, NAMELY, ROMPER SUITS, TIGHTS, SOCKS, TROUSERS, SHIRTS, T-SHIRTS, DRESSES, SKIRTS, BONNETS, CAPS, GLOVES, SCARVES, JACKETS, AND BABY BIBS MADE OF TEXTILE MATERIAL; BATH SANDALS; BOAS; UNDERWEAR, BRASSIERES, SLIPS, CORSETS, BODICES, FOUNDATION GARMENTS, KNICKERS; GYMNASSTICS CLOTHES, NAMELY PANTS, SHIRTS, T-SHIRTS, BODICES; GYMNASSTIC SHOES; CUFFS; PETTICOATS; SARIS; MANTILLAS; NYLONS, NAMELY, STOCKINGS AND TIGHTS; KNITWEAR, NAMELY, PULLOVERS, JUMPERS, SCARVES,

GLOVES, BONNETS; LEATHER BELTS, IN CLASS 25
(U.S. CLS. 22 AND 39).

OWNER OF INTERNATIONAL REGISTRATION
0805040 DATED 11-13-2002, EXPIRES 11-13-2012.

THE COLOR(S) RED, BLACK IS/ARE CLAIMED
AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF A RED CAPITOL
LETTER 'T' THAT IS ENCASED IN A BLACK
SQUARE ON TOP OF THE WORDING TIMEZONE,
WHICH IS ALSO WRITTEN IN BLACK.

SER. NO. 79-009,147, FILED 10-8-2004.

ANGELA M. MICHELI, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101, and 107

Reg. No. 2,602,441

United States Patent and Trademark Office

Registered July 30, 2002

**SERVICE MARK
PRINCIPAL REGISTER**

RETRO TIME ZONE

**GALAXY SOUND TECHNOLOGIES, INC. (OHIO
CORPORATION)
P.O. BOX 8105
ZANESVILLE, OH 437028105**

**TAINMENT, MUSIC, AND VIDEOS, IN CLASS 41
(U.S. CLS. 100, 101 AND 107).**

FIRST USE 9-28-2000; IN COMMERCE 9-28-2000.

**FOR: NAMELY, ENTERTAINMENT SERVICES
IN THE NATURE OF RADIO PROGRAMS AND
DISCOTHEQUE AND DANCE CLUB SERVICES,
FEATURING LIVE AND PRE-RECORDED ENTER-**

SN 76-153,454, FILED 10-25-2000.

MATTHEW KLINE, EXAMINING ATTORNEY